IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

CRL.A.No. 359 of 2004()

SC.275/2001 of ADDL. SESSIONS COURT FAST TRACK COURT-II (ADHOC-COURT), THRISSUR
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APPELLANT: COMPLAINANT

STATE OF KERALA REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
(CHARGED BY C.I. OF POLICE, THRISSUR, WEST POLICE STATION IN CRIME NO.243/2000 OF THRISSUR WEST POLICE STATION)

BY PUBLIC PROSECUTOR SRI C.M.KAMMAPPU

RESPONDENTS: ACCUSED A1, A4, A5, A7, A8 & A9
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1. JOJO S/O. CHALISSERRY VEETTIL GEORGE, PUTHOORKKARA DESOM, AYYANTHOLE VILLAGE, THRISSUR TALUK.

2. RAJAN S/O. PULAKKAL VEETTIL JAYAN, DO.

3. SATHIA S/O. AVANOOR VEETTIL VELAYUDHAN, DO. DO.

4. AMAL S/O. KUTTOOR VEETTIL PUSHPAKARAN, HARISREE NAGAR, PUTHOORKKARA.

5. LINTO S/O. MEPULLY VEETTIL ANTONY, SANTHI NAGAR, PUTHOORKKARA.

6. RAVI S/O. VELUTHADATH PADMANABHAN, KOLOPARAMBA DESOM, AYYATHOLE VILLAGE.

R1 to R6 BY ADV. SRI.P.VIJAYA BHANU
SRI.TONY MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & K.HEMA, JJ.

Crl.A.NO.359 OF 2004

Dated this the 7th day of August, 2007

JUDGMENT

Hema,J.

This is an appeal by the State against an order of acquittal passed by the Additional Sessions Judge, Fast Track Court-II, (Adhoc Court), Thrissur. Respondents are the accused in the case and court framed charge against them for offences under Section 302 read with Section 34 of the Indian Penal Code ("IPC" for short). After the trial, they were acquitted of the above offences and hence this appeal.

2. According to the prosecution, the deceased-Santhosh had allegedly caused hurt to the lst accused, Joju. Motivated by such enmity the lst accused joined hands with other accused and committed murder in furtherance of their common intention. They assembled and proceeded together in two autorickshaws driven by 8th and 9th accused to the place of occurrence where PW-1 and the deceased-Santhosh were standing and talking. The lst accused then cut on the head of the deceased-Santhosh with a sword and the 2nd accused, who later expired, cut on the right forearm. PW-1 was chased by the 3rd accused (absconding) and 4th accused. Thereafter, all the accused cut Santhosh

with sword and also beat him with iron pipes on several parts of the body and inflicted injuries, consequent to which, he died at the spot. PW-1 and PW-9 took the deceased-Santhosh to the hospital and he was declared dead by the doctor, PW-12, who issued Ext.P5.

3. PW-1 gave First Information Statement, Ext.P1, on the same day in the night at 9 p.m. to PW-18, who registered F.I.R., Ext.P10. Investigation commenced, Inquest was conducted, the body was sent for post-mortem examination, accused were arrested. Recoveries of weapons were made, pursuant to the alleged confession statement given by the 2nd accused and after completion of the investigation, charge was laid against the accused for offences under Sections 143, 147, 148 and 302 read with Section 149 of the I.P.C. After hearing both sides, the court below framed charge against the accused for offences under Section 302 read with Section 34 of the I.P.C.

4. To prove the prosecution case PWs.1 to 19 were examined and Ext.P1 to P23 series and M.O.1 series to M.O.6 series were marked. On the side of the accused Exts.D1 to D6 were marked. After analysing the evidence adduced by both sides, the trial court found that the alleged eye witnesses, PWs.1 and 3 are not believable. The court below also found that the recovery of weapons on the basis of the confession statement of the deceased 2nd accused cannot be acted upon and came to the finding

that the accused are not guilty. Therefore, they were acquitted of the said offences under Section 302 read with Section 34 of the I.P.C. The said offences are challenged in this appeal by the State.

5. The learned Public Prosecutor vehemently argued that the court has committed an error in disbelieving PWs.1 and 3, the eye witnesses. According to him, the reasons shown for rejecting their evidence are not legally acceptable. The court below has relied upon the suggestions made by the defence that PW-1 is a criminal, but his evidence will reveal that he was acquitted, it is pointed out. It is true that in the cross-examination it was brought out that PW-1 was involved in various criminal cases as a co-accused along with the deceased-Santhosh. Those suggestions, which were made during the cross-examination of PW-1, were flatly denied. PW1 asserted that he was not a co-accused with the deceased-Santhosh but when he was confronted with the certified copies of the F.I.R. in various criminal cases, he had no other alternative than to admit and accordinlgy he admitted the relevant facts.

6. It was also suggested that PW-1 and the deceased Santhosh were included in the K.D. list of town west police station, but this fact could not be denied by PW-1. It is needless to say that a witness, who denies certain important and relevant facts subsequently admits those facts only when he is confronted with certified copies of the documents is

not believable normally. Therefore, the court below has not committed any error in taking into consideration the above facts to doubt the veracity of the version given by PW-1. It is clear from the cross-examination and the answers given by PW-1 that he was interested in the deceased and he was a co-accused along with him and he is in the K.D. list and therefore, his evidence has to be assessed and evaluated with greater care and caution. The court below has only applied this rule of prudence before the evidence of PW-1 was rejected.

7. On going through the judgment it can be seen that the court below has shown valid reasons for disbelieving the evidence of PW-1. This evidence was found to be contradictory to the medical evidence. We do not find any perversity in such findings. While PW-1 stated that he was an eye witness to the occurrence and that he found an injury being inflicted on the head of the deceased-Santhosh with a sword, the medical evidence reveals that the injury on the head could not have been caused by a sharp-edged weapon like sword. According to the doctor, the injury could have been caused only by the blunt portion of the sword. PW-1 has no case that a blunt side of the sword was used for cutting the deceased-Santhosh.

8. The lower court also doubted the presence of PW-1 at the scene of occurrence in the light of the evidence of PW-9. The evidence of PW-1

and PW-9 cannot be believed, as both are contradictory to each other regarding the presence of PW-1 at the scene of occurrence. PW-9 has been examined by the prosecution as a person, who has taken the deceased to the hospital, but he specifically stated in the cross-examination that PW-1 was not present, when the deceased-Santhosh was taken to the hospital in an autorickshaw.

9. The lower court also relied upon certain major contradictions in the evidence of PW1 to reject his version. In the First Information Statement PW-1 stated that Valsan (A3) and Rajan (A4) had cut Santhosh with sword. But before the court below he said that the 4th accused had beaten him with a metal rod. His version before court is that A9 (Ravi) referred to in the police charge sheet, was sitting in one of the autorickshaws at the time of the incident and it was the accused Linto, who drove the other autorickshaw. This fact is not seen in the First Information. The court below also relied upon the subsequent developments made by PW-1 to the story while examined in court. Certain other facts were also relied on by the court below, which are contradictory to the earlier F.I. Statement, Ext.P1. This evidence of PW-1 was rejected only after it being tested in the proper perspective. We do not find anything wrong in such findings, so as to call for interference.

10. The lower court also found that Ext.P1 First Information

Statement was not prepared on the date and time as stated in Ext.P1, but it was subsequently prepared and ante-dated. This was also taken as a ground to doubt the prosecution case. On going through the evidence of PW-1, it is clear that the First Information Statement was not given on the date and time which is shown in Ext.P1. As per Ext.P1, the First Information Statement was given on 4/7/1999 at 9 p.m. But PW-1 categorically stated in cross-examination that the said statement was given only on the next day (5/7/1999). He also asserted in cross-examination that Ext.P1 was signed by him only on the next day i.e. on 5/7/1999. He stated that he had not stated about the incident, even though he was present in the hospital through out the night. In the light of the evidence given by PW-1, who is the first informant, the court below has not committed any error in coming to the conclusion that the First Information Statement was given only on the next day i.e. on 5/7/1999 and not on the day which is stated in Ext.P1.

11. The court below has taken into account the fabrication of Ext.P1 also as a ground to reject the prosecution case. The evidence of PW-3 is also disbelieved on valid grounds. The court below found that PW3 could not have seen the incident, since he was sitting in a place from where his view will be blocked by the compound wall situated in the premises of the Chapel. An attempt was made by the prosecution to bring out that there

were grills in the compound wall and hence the incident could have been seen by PW-3. But this fact was not stated in the scene mahazar. Therefore, the court below found that the chances of PW-3 to see the incident is too remote. At any rate, on going through the evidence of PW-3 and the judgment of the court below, we find that there is no perversity in the findings of facts entered into by the court below. The appellate court can interfere in the findings of facts in an appeal against the acquittal, only if the findings are so perverse that no prudent man will come to such conclusions. We do not find that the findings can be treated as perverse warranting interference.

12. The court below also rightly rejected the evidence relating to the recovery of weapons. According to the prosecution, the 2nd accused (deceased) gave a confession statement to PW-19 pursuant to which recoveries were made. But the court below held that such confession statement was not proved in evidence. PW-9 did not state before the court the exact information, which was allegedly passed on to him by the 2nd accused, which lead to the recovery. It is only if the information given by the accused is spoken to or deposed to by the Investigating Officer to whom the confession is made, such information can be taken as proved. In the absence of any such proof, the court below was only correct in rejecting the alleged statement made by accused which is sought to be

proved under Section 27 of the Evidence Act. No reliance was also placed on the recoveries and we do not find any impropriety or illegality in such findings. Summing up, we hold that there is absolutely no reason why the order of acquittal should be interfered with.

This appeal is dismissed.

P.R.RAMAN,
Judge.

K.HEMA,
Judge.

kcv.